

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

JAMES LEE BISHOP,

Defendant-Appellee.

UNPUBLISHED

November 25, 2008

No. 284303

Calhoun Circuit Court

LC No. 07-004402-FH

Before: Markey, P.J., and Whitbeck and Gleicher, JJ.

PER CURIAM.

Defendant James Lee Bishop was charged with one count of carrying a concealed weapon, MCL 750.227, following a traffic stop of a truck in which he was a passenger. The prosecution appeals by leave granted the trial court's order granting defendant's motion to suppress the evidence. We reverse.

On October 5, 2007, at approximately 3:00 p.m., Officer Seth Graves was driving in his patrol car on East Columbia Avenue in Emmett Township, Michigan. While following a four-door pickup truck, he observed that the truck's license plate was partially covered in violation of MCL 257.225(2). Graves initiated a traffic stop of the pickup; Robert Calvin was driving. The pickup also contained two passengers: one in the front seat and one, defendant, in the back. Officer Graves requested Calvin's driver's license, the registration and proof of insurance for the pickup. Calvin tendered his driver's license, but was unable to produce proof of insurance or the pickup's registration certificate, a violation of MCL 257.223(1). Officer Graves observed that Calvin appeared nervous, made no eye contact, and was "fumbling" around inside of the vehicle. Calvin also informed Graves that he came from Lansing and was just "passing through" Battle Creek, where he had no family, on his way back to Arizona. Graves testified that the totality of the situation, the covered plate, lack of a registration certificate, the nervousness of the vehicle's occupants, lack of eye contact, Calvin's statements and the lack of luggage or clothing in the pickup aroused his suspicions. At that point, Officer Graves asked for and collected the driver's licenses of the passengers. Graves then returned to his patrol car to request backup from other units. Calvin and the two passengers remained in the pickup.

In his patrol car, Graves entered the information on the driver's licenses into the Law Enforcement Information Network ("LEIN"). The LEIN check revealed that the licenses were valid, and there were no outstanding arrest warrants for the identified individuals. The LEIN check of the truck's occupants took approximately five minutes.

Although Calvin had told Graves the paper covering the pickup's license plate was a temporary registration and that its placement was lawful in Arizona, Graves did not believe it safe to approach the rear of the pickup to closely inspect the paper obstructing what appeared to be an out-of-state license plate before backup officers arrived. With the information he had, Graves did not know whether the pickup was stolen or lawfully in Calvin's possession.

When backup police units arrived, Graves explained to the responding officers what he knew at that point. Graves returned to the pickup truck and requested that the driver exit to view the infraction leading to the traffic stop. Graves testified that because of factors already noted, he was concerned for his and the other officer's safety. He then asked Calvin what Graves characterized as a standard question: Were any "guns, drugs, bombs, knives," or similar items in the vehicle? Calvin responded there was a pistol in the back seat. Another officer then took Calvin into custody and placed him in the back of a patrol car. At the same time, Officer Graves ordered the two passengers out of the truck. At that point, and without any questioning from the officers, defendant stated that the "guns" in the backseat belonged to him. The officers subsequently recovered two pistols from a pocket behind the front passenger's seat.

At the joint preliminary examination of Calvin and defendant, counsel argued that the guns seized from pickup should be suppressed because the traffic stop was unlawful, and that at any rate, the detention had been longer than necessary to dispel any suspicion regarding the covered license plate. The district court ruled the stop was lawful and that the officer was permitted to run LEIN checks. With respect to the length of detention, the magistrate ruled, "we're not talking about a lengthy period of time in which . . . anyone was detained for that period, a long period of time." The district court characterized the incident as "a standard traffic stop" which was not converted to an unlawful detention by the time period of detention involved.

In the circuit court, defendant moved to suppress the guns seized from the pickup. Apparently, the parties stipulated that the motion could be decided on the preliminary examination record, briefs and arguments of counsel. The circuit court questioned whether defendant, as a passenger in the pickup, possessed standing to challenge the stop. The court accepted counsel's assurance that under *Brendlin v California*, ___ US ___, 127 S Ct 2400; 168 L Ed 2d 132 (2007) defendant had standing. Defendant's primary argument was that he was detained longer than necessary to dispel any suspicion regarding the covered plate; the police should have released him after verifying the validity of the truck occupants' licenses and receiving no adverse information in a LEIN check. The circuit court agreed and granted defendant's motion, concluding that the officers had no basis to continue holding defendant after the point Calvin made his assertion about the pistol in the backseat. The circuit court opined:

I do suppress the evidence. And I do so on the basis that I make a distinction between the detention of [defendant] and the detention of Mr. Calvin.

* * *

It's a very close question. But I really do think that the length of time even though it wasn't the six or eight minutes that the *Williams*¹ case refers to and [defendant] was not the driver, not the owner, like the defendant was in the *Williams* case is a sufficient distinction to suppress that evidence.

On appeal, the prosecution argues that the trial court erroneously granted defendant's motion. This Court reviews a trial court's findings of fact at a suppression hearing for clear error; however, the ultimate ruling on a motion to suppress is reviewed de novo. *People v Davis*, 250 Mich App 357, 362; 649 NW2d 94 (2002).

The Constitutions of the United States and Michigan guarantee the right of persons to be secure against unreasonable searches and seizures. US Const Am IV; Const 1963, Art 1 § 11. The touchstone of the Fourth Amendment is reasonableness, and reasonableness requires a fact-specific inquiry, which is ultimately measured by examining the totality of the circumstances. *People v Williams*, 472 Mich 308, 314; 696 NW2d 636 (2005).

We conclude the circuit court erred by focusing on defendant's detention instead of determining whether under the totality of the circumstances the actions of the police were objectively reasonable. The stop of the pickup resulting in the seizure of defendant was reasonable, and therefore lawful, because an objective basis justified Officer Graves' belief that a civil infraction, MCL 257.225(2), was being committed in his presence. "As a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." *Whren v United States*, 517 US 806, 810; 116 S Ct 1769; 135 L Ed 2d 89 (1996). Further, we agree with the district court, which heard Officer Graves' testimony, that the duration of the detention of all the vehicle's occupants was reasonable under all the circumstances. *Williams*, *supra* at 314-315.

Moreover, to the extent the duration of defendant's detention may be analyzed separately and determined unreasonable, the search and seizure of the guns did not flow from it. Consequently, suppression of the evidence would be unwarranted as to defendant. See *People v Frazier*, 478 Mich 231, 235, 247-251; 733 NW2d 713 (2007) (the exclusionary rule applies only to evidence obtained as a result of police misconduct); and *People v Stevens (After Remand)*, 460 Mich 626, 636; 597 NW2d 53 (1999) ("The exclusionary rule forbids the use of direct and indirect evidence acquired from governmental misconduct . . .") (Citations omitted). As this Court has stated, "[t]he fruit of the poisonous tree doctrine calls for the exclusion of evidence only where that evidence was obtained as a result of official impropriety directed against the party moving for suppression." *People v Malone*, 177 Mich App 393, 400; 442 NW2d 658 (1989). The *Malone* Court relied on the Supreme Court's decision in *Wong Sun v United States*, 371 US 471, 491-492; 83 S Ct 407; 9 L Ed 2d 441 (1963), from which the doctrine of the fruit of the poisonous tree emanated. The *Wong Sun* Court rejected the suppression of evidence as to one defendant that was obtained based on information unlawfully obtained from a codefendant. *Id.* The *Malone* Court explained that although the *Wong Sun* Court held the evidence could not

¹ *People v Williams*, 472 Mich 308; 696 NW2d 636 (2005).

be used against the codefendant, it could be used against the defendant “since, as to him, it was free of the taint of official impropriety.” *Malone, supra* at 401.

Generally, defendant would lack standing to challenge a search of and seizure from a motor vehicle in which he was a mere passenger. *People v LaBelle*, 478 Mich 891, 892; 732 NW2d 114 (2007). Standing exists where one possesses a reasonable expectation of privacy that society is prepared to recognize as reasonable. *People v Smith*, 420 Mich 1, 20-28; 360 NW2d 841 (1984). The concept of standing flows from the principle that constitutional rights are personal and cannot be asserted vicariously. *Id.* at 20. Here, the constitutional right defendant asserts is his right to freedom from unreasonable governmental seizures. Because a passenger in a motor vehicle subjected to a traffic stop by the police is seized within the meaning of the Fourth Amendment, a passenger has standing to challenge the constitutionality of the stop. *Brendlin, supra*, 127 S Ct 2403; see also *People v Armendarez*, 188 Mich App 61, 69; 468 NW 893 (1991).

In the instant case, the initial traffic stop was proper based on the partial obstruction of the truck’s registration plate. MCL 257.225(2) provides in pertinent part that the registration “plate shall be maintained free from foreign materials that obscure or partially obscure the registration information, and in a clearly legible condition.” Violation of this section is a civil infraction. MCL 257.225(6). Officer Graves thus had probable cause to believe that the driver of the truck was violating at least one traffic law; consequently, because the traffic stop was based on probable cause, it was reasonable. *Whren, supra* at 810; *Davis, supra* at 363. Moreover, the police may detain an individual to conduct a LEIN check to verify the driver’s license, to confirm the vehicle’s registration, to determine whether the driver has outstanding warrants, or to determine whether the vehicle has been reported stolen. *Id.* at 365-367.

Here, the LEIN checks were negative on all three individuals, and the circuit court, relying on *United States v Smith*, 263 F3d 571 (CA 6, 2001), accepted defendant’s argument that he should have been allowed to leave at the point the officer was so advised. In *Smith*, the police lawfully stopped the defendant’s car for a traffic violation. The police officer who made the stop was satisfied Smith lawfully possessed the car even though the rental agreement was only in the name of Smith’s spouse. The officer also completed his investigation of the traffic violation by issuing Smith a warning citation. *Id.* at 575. Based on a number of factors that the *Smith* court determined did not rise to the level of reasonable, articulable suspicion that criminal activity was afoot, the officer then further detained the rental car’s occupant’s, had a dog sniff for drugs, and conducted a full search of the vehicle after the dog alerted. He recovered drugs and a gun. *Id.* at 576, 594. The court opined, ““once the purpose of the traffic stop is completed, a motorist cannot be further detained unless something that occurred during the stop caused the officer to have a reasonable, articulable suspicion that criminal activity was afoot.”” *Id.* at 588, quoting *United States v Hill*, 195 F3d 258, 264 (CA6, 1999).

Although we agree with the statement of law in *Smith*, the facts of that case are clearly distinguished from these here. Officer Graves’ un rebutted testimony at the preliminary examination established he had not yet completed his investigation regarding the original basis for the stop, the obstructed license plate, when Calvin told him there were guns in the truck. Unlike the officer in *Smith*, Graves had not satisfied himself that Calvin lawfully possessed the pickup. Calvin could not produce a registration certificate, and Graves testified he believed it would be unsafe without the presence of backup officers to closely inspect the purported

temporary registration covering the pickup's license plate.² As this Court observed in *Armendarez*, *supra* at 69-70, quoting *Terry v Ohio*, 392 US 1, 23; 88 S Ct 1868; 20 L Ed 2d 889 (1968), “[c]ertainly it would be unreasonable to require police officers to take unnecessary risks in the performance of their duties.” Once backup units arrived, Officer Graves requested Calvin's presence at the rear of the pickup to further discuss the basis of stop, the obstructed license plate.

“A traffic stop is reasonable as long as the driver is detained for the purpose of allowing an officer to ask reasonable questions concerning the violation of law and its context for a reasonable period.” *Williams*, *supra* at 315. Officer Graves' questioning regarding the placement of the temporary tag over the registration plate was reasonable under the circumstances as it pertained to the violation. An officer may properly seek to determine whether a violation has occurred, and if so, whether a warning or citation should be issued or an arrest made. *Id.* at 316, quoting *United States v Brigham*, 382 F3d 500, 508 (CA 5, 2004). Ultimately, Officer Graves did not issue a traffic citation to the driver.³

Further, “when a traffic stop reveals a new set of circumstances, an officer is justified in extending the detention long enough to resolve the suspicion raised.” *Williams*, *supra* at 315. In *Williams*, our Supreme Court held that the traffic stop was reasonable in scope and duration where the occupants provided conflicting stories with respect to their destination, the police officer confronted the driver with the conflicting stories, and the police officer requested consent to search the vehicle. *Id.* at 310-311, 317. Here, Officer Graves testified that he was concerned for his own safety and that of two additional officers who arrived on the scene because the driver was nervous, made no eye contact, and claimed that although he had been visiting family in Lansing and was back en route to Arizona from Michigan that day, he had no luggage in the truck. Only after these observations did Officer Graves ask if there were any weapons or drugs

² At oral argument, counsel for defendant suggests that it would have been readily apparent to Officer Graves when he first approached the pickup that the obstruction covering the truck's license plate was in fact a valid temporary Arizona registration plate. The record made at the preliminary examination, however, does not support this conclusion. Exhibit one attached to defendant's brief purports to be a copy of the temporary plate that was admitted at the preliminary exam. It does have the statement at the bottom - “Arizona Temporary Registration Plate” - in what appears to be Arial 8-point font superimposed over anti-forgery squiggly lines. According to Officer Graves' unrebutted testimony, however, he could not determine from his observation that the obstruction was a valid temporary registration plate. Specifically, Graves testified that he could not identify what state issued the obstructed plate, did not identify the bold numbers displayed as being a registration plate, could not confirm the truck was not stolen, could not read the printing at the bottom of what he later determined to be an Arizona temporary (paper) registration plate unless he closely inspected it, and he did not believe it safe to closely inspect the paper without the presence of other officers.

³ Officer Graves presumably did not issue a citation because MCL 257.216(a) provides that non-residents are not subject to our State's vehicle registration requirements. This does not negate the validity of the initial stop, however, because a police officer need only have reasonable suspicion that a violation may have occurred. *Davis*, *supra* at 363.

in the vehicle. In addition, the LEIN check took only approximately five minutes,⁴ Officer Graves asked follow-up questions reasonably related to the traffic violation, and the driver voluntarily responded that a weapon was in the truck. Based on these undisputed facts and circumstances, we conclude that the instant traffic stop was reasonable in scope and duration.

Under the vehicle exception to the warrant requirement, where a vehicle is readily mobile and probable cause exists to believe it contains contraband, the police may search the vehicle, its compartments and any containers therein without a warrant. *Maryland v Dyson*, 527 US 465, 467; 119 S Ct 2013; 144 L Ed 2d 442 (1999); *People v Kazmierczak*, 461 Mich 411, 422; 605 NW2d 667 (2000). It was undisputed that Calvin told Officer Graves about a pistol in the truck's backseat. Once Calvin informed the police that there were pistols in the backseat of the truck, the police had probable cause to believe that the truck contained contraband. *Id.* The ensuing search was thus proper. The circuit court erred in suppressing the evidence found in the vehicle.

We reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ William C. Whitbeck

⁴ “[T]his amount of time is a minimal invasion in light of the substantial governmental interest in arresting citizens wanted on outstanding warrants.” *Davis, supra* at 367-368.